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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92052897
Party	Plaintiff Thomas SkÅ¶ld
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Date	03/23/2011
Attachments	BRIEF IN OPP.pdf ( 4 pages )(121070 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration Nos. 2985751; and 3394514

Dated: August 16, 2005 & March 11, 2008, Respectively

Thomas Sköld,	)	
Petitioner,	)	
	)	
v.	)	
	)	Cancellation No. 92052897
Galderma Laboratories, Inc.,	)	
Registrant	)	
	)	

**BRIEF IN OPPOSITION TO MOTION TO STRIKE AND  
MOTION FOR A MORE DEFINITE STATEMENT**

Petitioner files herewith a Amended Petition for Cancellation along with a motion asking that Amended Petition for Cancellation be entered.

Alternative Contract Theories

Petitioner submits that it has put forward reason to understand why the two contract causes do and should fall within the Board's jurisdiction. Accordingly, Petitioner asks reconsideration of the Board's ruling that these are not grounds for cancellation.<sup>1</sup>

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<sup>1</sup> As noted by the Board, it would be helpful if Registrant agreed to the terms of confidentiality so that the Board could review some of the primary documents.

### Prior Use

Without conceding the boundaries of notice pleading, Petition submits that the Amended Petition for Cancellation clearly recites facts on use in the United States, continuous use, and trademark-defining use.

It is clear from the Amended Petition for Cancellation that the trademark licenses to Collagenex/Galderma (Registrant) was exclusive as to other companies, but contemplated continued use by Petitioner. (The 2004 Agreement was silent on this point, but this was the manner in which the agreement openly operated without complaint.) Thus, throughout the period of licensing, Petitioner promoted his Restoraderm technology, and his Restoraderm technology services, in cooperation with Petitioner's and Registrant's joint interest in inducing pharmaceutical companies to partner with Registrant. Thus, while Registrant will surely contest whether these were his uses of the mark or Registrant's, that is a matter for fact finding.

Moreover, because the mark remained affiliated with Petitioner, and was used by Petitioner in his consulting with Registrant, his activities with the U.S. based Registrant were trademark-defining activities.

Petitioner may seek to assert that the Petitioner's uses were too infrequent. But, as stated in the House Judiciary Report on H.R. 5372, H.R. No. 100-1028, p. 15 (Oct. 3, 1988):

[T]he [House Judiciary] Committee recognizes that the "ordinary course of trade" varies from industry to industry. Thus, for example, it might be in the ordinary course of trade for an industry that sells expensive or seasonable products to make infrequent sales. Similarly, a pharmaceutical company that markets a drug to treat a rare disease will make correspondingly few sales in the ordinary course of its trade; the company's shipment to clinical investigators during the Federal approval process will also be in its ordinary course of trade.

Similarly, in this case, Petitioner has made relatively infrequent sales, but this is ordinary in the course of trade for the pharmaceutical development business. Moreover, sales activities have

been slowed by Registrant, who sequestered the technology by agreements that eventually were neglected and, when neglected and then terminated had the effect casting a cloud on title to the technology and inhibiting commerce. It cannot be the case that an inhibition of commerce caused by the adverse party can weigh towards finding a lack of use in commerce.

The sales and selling activity of Sköld was open and notorious to the purchasing public – namely pharmaceutical companies with dermatology lines of products, as indicated in the Amended Petition for Cancellation filed herewith.

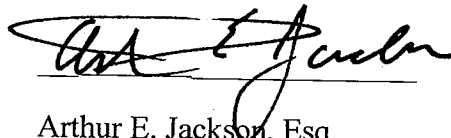
### Conclusion

In light of the foregoing, Petitioner submits that the prior use allegation is sufficiently pleaded. Petitioner further submits that the two contract theories should be reinstated.

Respectfully submitted,

Date: March 23, 2011

By:



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Thomas Sköld,  
Petitioner,

v.

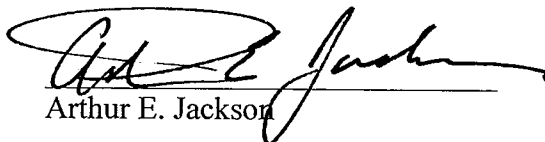
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Galderma Laboratories, Inc.,  
Registrant  
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Petitioner's Brief in Opposition to Motion to Strike and Motion for a More Definite Statement was sent first class mail, postage pre-paid on this 23<sup>rd</sup> of March, 2011 to:

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